



**Nexus Committee Agenda**  
**Open Session 10:30 – Noon MDT**  
(Preceded by Closed Session 8:30 AM – 10:15 AM MDT)  
Grouse Mountain Lodge  
Whitefish, Montana  
July 26, 2011

-- *Oro y Plata* --  
1889

**Open (Public) Session**

State government personnel and members of the public may attend the public session either in person or by teleconference. To participate by teleconference, please dial (1) 800-264-8432 or (1) 719-457-0337 and enter participant code 149611. The closed session is available only to state government personnel.

Members of the public wishing to address the committee with respect to a particular agenda item are welcome to do so during Comments from Public or when the committee turns its attention to the item of concern.

- I. Report from closed session, if any
- II. Review of Agenda
- III. Review/Approval of Open Session Minutes of March 2011
- IV. Comments from Public
- V. Executive Director's Report (this may happen at any time)
- VI. Nexus Director's Report
  - A. Nexus schools, membership, etc.
  - B. Voluntary Disclosure Program revenue results
- VII. New Business
- VIII. Environmental Scan (90 minutes)
  - A. Elizabeth Harchenko, former dir. Or. Dep't of Rev., facilitates a strategic planning exercise
- IX. Adjourn

For more information about this meeting, please contact Thomas Shimkin, Director of the National Nexus Program, Multistate Tax Commission, 444 North Capitol Street, N.W., Suite 425, Washington, D.C. 20001. Telephone (202) 508-3869. Email: [tshimkin@mtc.gov](mailto:tshimkin@mtc.gov).

**Nexus Director's Report  
Nexus Committee – Open Session  
Whitefish, Montana  
July 26, 2011**

This report briefs members of the Nexus Committee on highlights of the activities, challenges, and achievements of the National Nexus Program with respect to fiscal year 2011 (July 1, 2010 through June 30, 2011). The Commission prepares its reports on a fiscal year cumulative basis.

**Minutes of Last Meeting**

Unapproved minutes of the March 2011 open session Nexus Committee meeting are attached in the Appendix.

**Procedures of Multi-state Voluntary Disclosure**

Procedures of Multi-state Voluntary Disclosure are the rules governing the Commission's voluntary disclosure program. The Nexus Committee approved them at its July 2010 meeting and staff presented them to the Commission's Executive Committee at its fall 2010 meeting. The procedures are designed to alert taxpayers to how the Commission and member states will handle certain common or important situations. The rules in large part clarify and codify existing practice.

The procedures are posted on the Commission's website along with a re-drafted explanation of the voluntary disclosure process. You will find the re-drafted webpage and the procedures by pressing the blue Multistate Voluntary Disclosure button at [www.mtc.gov](http://www.mtc.gov) or by visiting directly <http://www.mtc.gov/Nexus.aspx?id=4967>.

The Procedures require that Nexus member states abide by them with respect to disclosures made through the Commission, except to the extent the state has opted out in advance. A state may opt out of any provision by informing Commission staff, who will note the opt out in the document itself.

**Voluntary Disclosure Agreement**

Commission staff have re-drafted the standard voluntary disclosure agreement and began using it in July 2011. Staff will, of course, alert state voluntary disclosure personnel to the changed text as each voluntary disclosure offer goes out.

The substantive terms do not differ from the present text other than to incorporate by reference the Procedures of Multi-state Voluntary Disclosure. The revision shortens the agreement significantly by eliminating unnecessary verbiage. The agreement is reduced from seven pages to four (not counting signature pages and exhibits). All sections are now numbered for easy citation. The hope is that taxpayers will find this document more clear, easier to review, and easier to work with.

A copy of the revised text is attached at the appendix. Comments are welcome.

## **Membership**

We conclude fy 2011 with the same thirty-eight member states as we had in fy 2010. Due to on-going unfilled staff positions, the current level of member dues is sufficient to maintain the present profile of Nexus Program services. The positions now unfilled formerly provided research services related to nexus discovery.

## **Staffing**

The program continues to focus on multi-state voluntary disclosure. Approximately 3½ FTEs work on voluntary disclosure, including the ½ FTE of the program director. The remaining ½ FTE (mostly the program director) works on Nexus School, compliance projects, other projects, and general administration.

## **Nexus Schools**

The Multistate Tax Commission's Nexus School is a two-day training course that teaches the basics of state tax jurisdiction (nexus) to government personnel. The first day is dedicated to study of nexus law (what actions create nexus) and the second day covers techniques to discover non-filers who have nexus. The course is open only to state personnel.

The Commission conducted two Nexus Schools during this period – Helena in October 2010, and Denver in May 2011. A school will be offered in the fall in Little Rock, dates to be determined.

Staff continues its on-going project to update Nexus School materials.

## **Voluntary Disclosure Information Technology**

Staff continues to work with Revenue Solutions Incorporated (RSI) to make incremental improvements to the voluntary disclosure management software and will continue to do so as resources permit. In addition, RSI has prepared a very rough estimate of the cost of proceeding with Phase II of the Commission's database development. Phase II would involve, among other things, a capacity for taxpayers and states to communicate directly but anonymously. It would also allow states and taxpayer to check the status of a case online at any time.

## **Voluntary Disclosure Marketing**

Commission staff continues to explain the multi-state voluntary disclosure program during speaking engagements. The Nexus director made presentations to:

- Income Tax Symposium of Tax Executives Institute, Miami Fla.
- New Jersey Society of Certified Public Accountants, Roseland NJ
- Cornell Tax Club, New York City
- BNA State Tax Roundtable, Washington DC
- Got Nexus? Analyzing BNA's 2011 Survey of State Tax Departments (webinar), Washington DC

Other Commission staff, including the executive director, advertised multi-state voluntary disclosure during most presentations they made during the fiscal year.

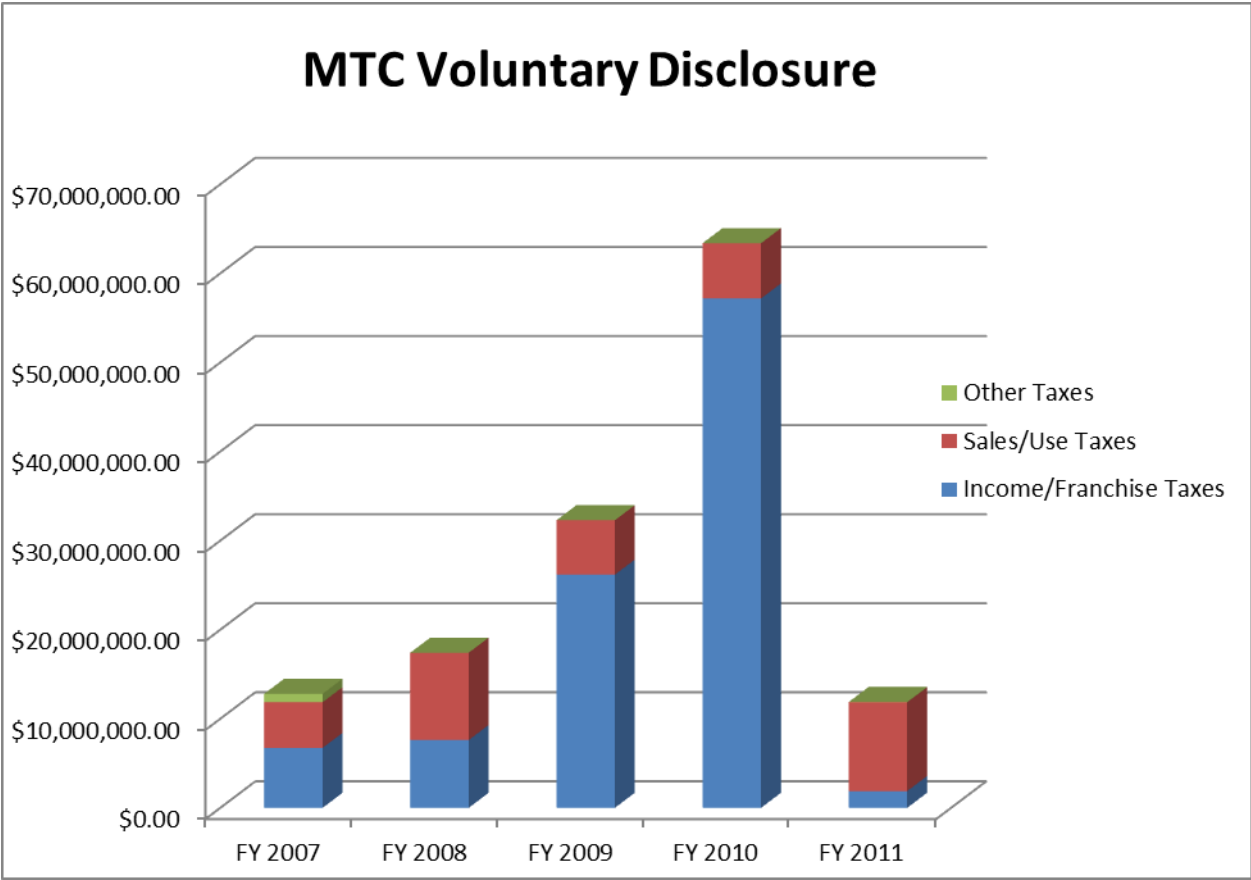
Other important sources of referrals to the program are from Google searches, state websites referencing the Commission's program, and pamphlets about multi-state voluntary disclosure given to taxpayers after state audits.

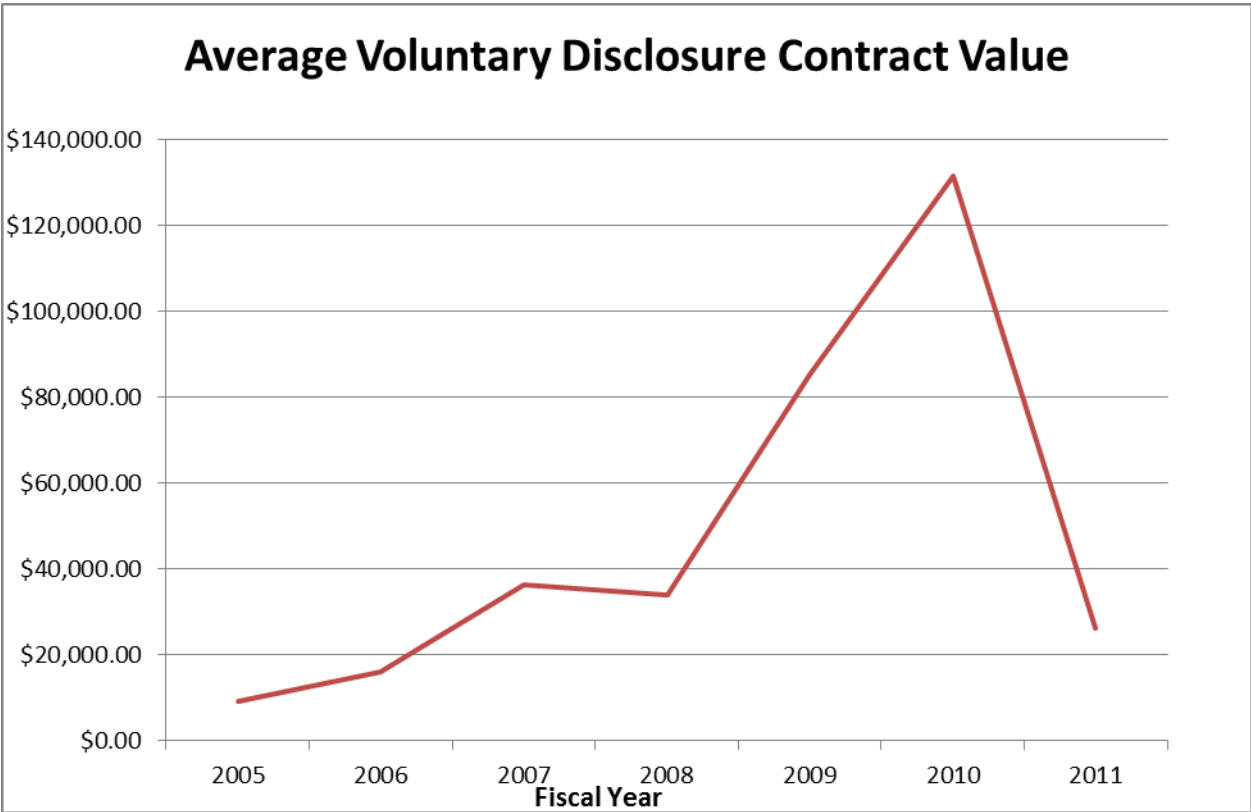
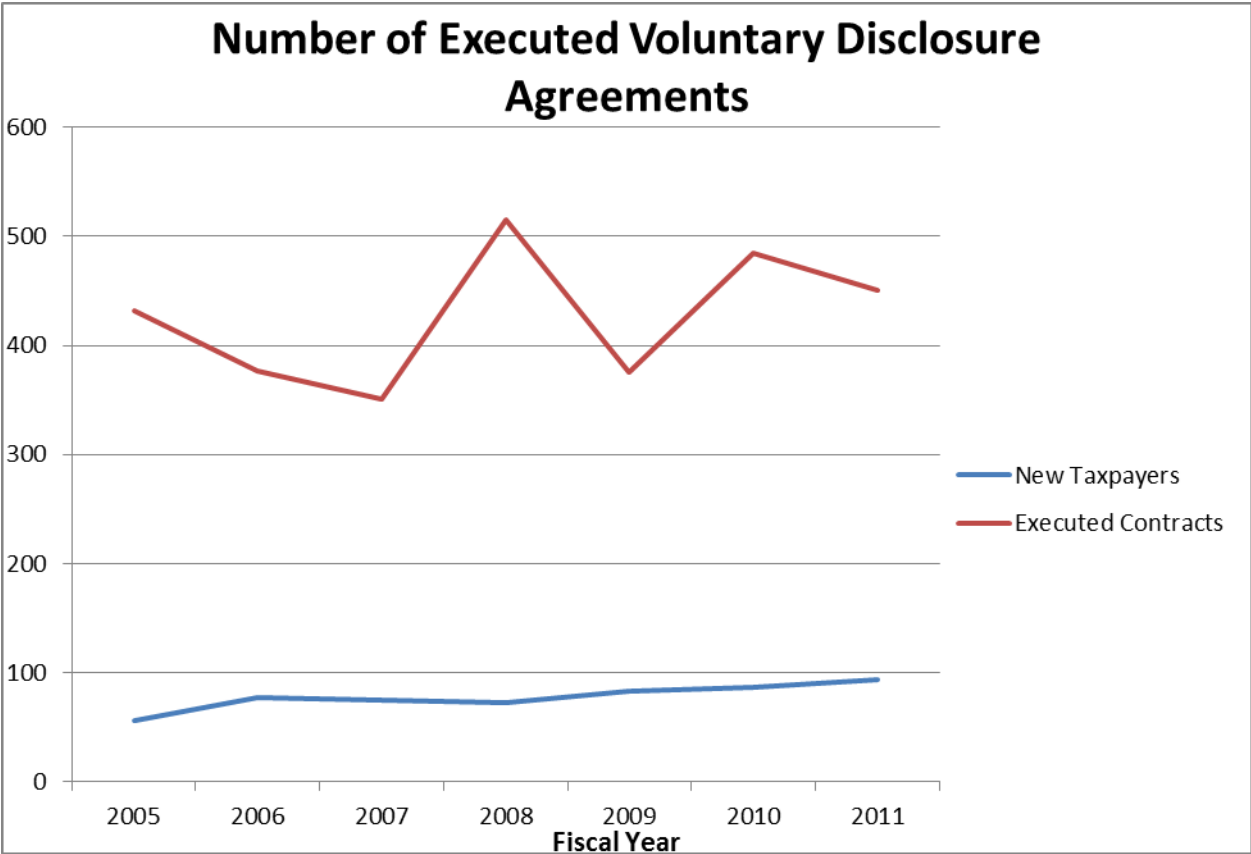
### **Voluntary Disclosure Revenue**

The Multistate Tax Commission's Voluntary Disclosure Program has experienced steadily growing success over the past two decades as measured both by taxpayers brought into compliance, and unpaid back taxes remitted to the states. Fiscal Years 2009 and 2010 were outliers in that the majority of the back taxes collected in those years came from two related entities. In Fiscal Year 2011 the Voluntary Disclosure Program approximately matched the strong results of Fiscal Year 2007.

#### **Back Taxes by Tax Type**

	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>
<b>Income/Franchise Taxes</b>	\$6,732,325.55	\$7,616,116.02	\$26,179,307.97	\$57,183,976.74	\$1,881,974
<b>Sales/Use Taxes</b>	\$5,119,639.20	\$9,799,635.52	\$6,105,308.70	\$6,206,553.57	\$9,968,267
<b>Other Taxes</b>	\$947,133.25	\$0	\$0	\$0	\$34,596
<b>Total Back Taxes Collected</b>	<b>\$12,799,098</b>	<b>\$17,468,156</b>	<b>\$31,964,967</b>	<b>\$63,396,870</b>	<b>\$11,884,837</b>





The chart below shows data for each of five anonymous states, selected to show a diversity of voluntary disclosure revenues. The five states provided the data. Predictably, states receive a large number of contracts through the Commission, but the average value of those contracts is lower than disclosures made directly. This seems to confirm common sense – that taxpayers work the high-dollar disclosures themselves because it is worth the effort to better control negotiations in the hope of achieving a better deal than available through the Commission.

**Survey Results:**

**Share of State VDA Revenue and Contracts from MTC**

<b>State VDA Revenue (past 3 years)</b>	<b>State VDAs</b>	<b>Percent Vol Discl Revenue from MTC</b>	<b>Percent Vol Discl Contracts from MTC</b>
\$10,124,246	161	5.31%	18.01%
\$11,387,887	416	1.48%	9.13%
\$17,924,519	389	4.21%	7.46%
\$51,641,550	360	2.52%	12.78%
\$59,000,000	565	0.70%	7.79%
NA	780	NA	5.13%

<u>Vol Discl Back Tax by Filing Requirements</u>			
	MTC Back Tax 2009-2011	Back Tax/GSP Ratio	Back Tax/ Capita
Unitary Filing Required	\$75,080	0.00	\$0.00
	\$78,609	0.05	\$0.02
	\$27,440	0.06	\$0.02
	\$233,175	0.07	\$0.02
	\$29,715	0.09	\$0.05
	\$39,254	0.09	\$0.04
Unitary Filing Optional or Prohibited	\$149,265	0.11	\$0.04
	\$59,896	0.12	\$0.05
	\$37,841	0.12	\$0.04
	\$168,881	0.12	\$0.04
	\$292,429	0.13	\$0.06
	\$358,484	0.16	\$0.06
	\$334,068	0.16	\$0.05
	\$593,202	0.17	\$0.07
	\$39,333	0.18	\$0.07
	\$200,764	0.18	\$0.07
	\$67,236	0.20	\$0.08
	\$710,933	0.21	\$0.07
	\$172,708	0.21	\$0.06
	\$410,141	0.21	\$0.11
	\$57,656	0.21	\$0.08
	\$115,338	0.21	\$0.06
	\$632,455	0.21	\$0.09
	\$501,294	0.24	\$0.09
	\$2,992,779	0.30	\$0.12
	\$322,561	0.33	\$0.12
	\$613,183	0.41	\$0.13
	\$1,397,360	0.44	\$0.21
	\$1,786,229	0.51	\$0.19
	\$1,299,831	0.59	\$0.26
	\$1,420,286	0.64	\$0.22
	\$2,623,436	0.64	\$0.23
	\$1,170,688	0.64	\$0.26
	\$537,359	0.71	\$0.30
	\$348,100	0.74	\$0.22
	\$1,719,352	0.82	\$0.29
	\$755,040	0.87	\$1.26
Mean GSP Ratio = 1.0	\$680,921	1.18	\$0.49
	\$3,110,626	3.51	\$1.07
	\$5,164,142	4.16	\$1.72
	\$26,989,238	4.20	\$1.44
	\$17,885,385	4.25	\$2.03
	\$19,286,296	7.71	\$3.33
	\$10,896,927	7.83	\$2.37

The above table shows the relationship between filing requirements (unitary v. separate entity) in various states and the state's MTC voluntary disclosure revenue. The table is ordered by the GSP Ratio which is an indicator of how much voluntary disclosure revenue the state received relative to the size of the state's economy. There are too many uncontrolled variables to draw reliable conclusions from these data. They are offered only to suggest patterns.



<u><b>Vol Discl Back Tax by Treatment of Economic Presence</b></u>			
	<b>MTC Back Tax 2009-2011</b>	<b>Back Tax/GSP Ratio</b>	<b>Back Tax/ Capita</b>
<b>Economic Presence <u>is</u> a Factor in Determining Income Tax Nexus</b>	\$75,080	0.00	\$0.00
	\$78,609	0.05	\$0.02
	\$27,440	0.06	\$0.02
	\$233,175	0.07	\$0.02
	\$29,715	0.09	\$0.05
	\$39,254	0.09	\$0.04
<b>Economic Presence <u>is not</u> a Factor in Determining Income Tax Nexus</b>	\$149,265	0.11	\$0.04
	\$59,896	0.12	\$0.05
	\$37,841	0.12	\$0.04
	\$168,881	0.12	\$0.04
	\$292,429	0.13	\$0.06
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<b>Mean GSP Ratio = 1.0</b>	\$680,921	1.18	\$0.49
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	\$19,286,296	7.71	\$3.33
	\$10,896,927	7.83	\$2.37

The above table shows the relationship between income tax nexus standards (economic presence v. physical presence) and the state's MTC voluntary disclosure revenue. The table is ordered by the GSP Ratio which is an indicator of how much voluntary disclosure revenue the state received relative to the size of the state's economy.